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**UNITED STATE DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

AXIA FINANCIAL, LLC d/b/a AXIA HOME  
LOANS,

Plaintiff,

v.

MASON MCDUFFIE MORTGAGE CO.,

Defendant.

Case No. 3:23-cv-03256

**COMPLAINT FOR:**

- 1. UNFAIR COMPETITION  
(CALIFORNIA BUSINESS AND  
PROFESSIONS CODE §§ 17200 ET  
SEQ.)**
- 2. INTENTIONAL INTERFERENCE  
WITH PROSPECTIVE ECONOMIC  
ADVANTAGE**
- 3. NEGLIGENT INTERFERENCE  
WITH PROSPECTIVE ECONOMIC  
ADVANTAGE**
- 4. TORTIOUS INTERFERENCE  
WITH CONTRACT**
- 5. VIOLATION OF CALIFORNIA  
PENAL CODE § 502(C)(1),(2),(3) &  
(7)**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Axia Financial, LLC d/b/a Axia Home Loans (hereinafter “Axia”), by its attorneys,  
2 and for its complaint against Mason McDuffie Mortgage Co. (hereinafter “MasonMac”), alleges as  
3 follows:

4 **NATURE OF THIS ACTION**

5 1. Axia is a Washington State-based residential mortgage lender founded in 1970. Axia  
6 is 100% employee-owned, and has spent considerable time and money in establishing its reputation  
7 as one of the leading mortgage companies in the nation. Axia is fully committed to creating  
8 sustainable home ownership through responsible lending. In order to accomplish this goal, Axia  
9 developed an operations model and organizational structure to better serve its communities. This  
10 includes branch offices located in 15 states throughout the continental United States, organized into  
11 various areas and regions.

12 2. MasonMac, in an attempt to benefit from the hard-earned reputation and success of  
13 Axia, has engaged in a practice of systematically and illegally raiding Axia for its employee and  
14 management talent and, upon information and belief, of stealing Axia’s confidential data, including  
15 detailed, proprietary customer lists and financial data, from its computer systems in order to unfairly  
16 compete in the marketplace. MasonMac unlawfully induced Axia employees to violate their  
17 contractual and fiduciary duties and duties of loyalty owed to Axia by urging other Axia employees  
18 to encourage their colleagues to leave *en masse* without notice to Axia, and to join MasonMac while  
19 stealing Axia’s confidential information in violation of California statutory and common law.

20 3. Specifically, since January 2022, MasonMac systematically, methodically, and  
21 purposefully misappropriated talent and information, decimating several of Axia’s branches. During  
22 this time, MasonMac induced 28 Axia employees to breach their contracts, duties of loyalty, and  
23 other obligations. Further, MasonMac has interfered with Axia’s relationships with its current and  
24 prospective customers, and has misappropriated and used Axia’s confidential information.

25 4. For example, MasonMac very recently conspired with former Axia Area Manager  
26 Don Bartolomucci (“Bartolomucci”), former Axia Retail Sales Director Suzanne Hall (“Hall”), and  
27 numerous other employees from Axia’s various branches, offering them lucrative employment  
28 packages with MasonMac in order to persuade other Axia employees to resign *en masse*, and to

1 defect to MasonMac. Further, MasonMac induced these Axia employees to take confidential  
2 business and client information with them, in violation of their employment agreements with  
3 Axia. Moreover, Axia is informed and believes that there is evidence that this orchestrated  
4 scheme is ongoing, and that additional Axia employees are still being encouraged to violate their  
5 obligations to Axia, and to misappropriate Axia's confidential information for the benefit of  
6 MasonMac.

7 5. In order to remedy this misconduct, Axia brings this action against MasonMac, for  
8 violating California Business & Professions Code sections 17200 *et seq.*, intentionally and  
9 negligently interfering with business expectancy, interfering with contracts, violating California's  
10 computer data theft statute (Penal Code section 502(c)), and seeks injunctive and monetary relief.

11 6. Although Axia's investigation of MasonMac's wrongful conduct is ongoing, on  
12 information and belief, MasonMac encouraged and facilitated efforts by prominent Axia  
13 employees, including, but not limited to, Bartolomucci, Hall, and the 25 other employees who left  
14 Axia to join MasonMac, to abuse their positions of trust, exploit information gained as a result of  
15 their status as trusted Axia employees, breach their contracts and fiduciary duties, encourage other  
16 Axia employees to do the same, instruct other Axia employees to remove Axia's confidential  
17 information, interfere with Axia's customer relationships, violate their duties of loyalty to their  
18 employer, and to unfairly compete with Axia.

19 **PARTIES**

20 7. Plaintiff Axia is a limited liability company organized and existing under the laws of  
21 Washington, with its principal place of business at 3009 112th Ave NE, Suite 200, Bellevue, WA  
22 98004. The sole member of Axia's LLC is a corporation, Axia Holdings, which is incorporated in  
23 the State of Washington, with a principal place of business in Washington. Thus, Axia and its sole  
24 member are citizens of Washington. Axia has branch offices across the United States, including  
25 in California.

26 8. Upon information and belief based on public filings, Defendant MasonMac is a  
27 corporation founded in 2005 and organized and existing under the laws of California. It has its  
28

1 principal place of business at 12647 Alcosta Blvd, Suite 300, San Ramon, CA 94583, and it is a  
2 citizen of California.

### 3 **JURISDICTION AND VENUE**

4 9. This Court has jurisdiction under 28 U.S.C. § 1332 (diversity jurisdiction) because (1)  
5 Plaintiff's sole member is a citizen of Washington and, upon information and belief based on public  
6 filings, Defendant is a citizen of California, and (2) the amount in controversy exceeds \$75,000.

7 10. Venue is proper in the United States District Court for the Northern District of  
8 California because Defendant resides in this district. Moreover, a substantial part of the events  
9 giving rise to the claim occurred in and emanated from San Ramon, CA, where MasonMac is  
10 based. 28 U.S.C. § 1332(b)(1) and (2).

### 11 **FACTUAL BACKGROUND**

#### 12 **A. Axia's Business**

13 11. Axia is a residential mortgage lender focused on creating sustainable  
14 homeownership through responsible lending. Axia uses a relationship-based strategy to originate  
15 its loans, and has obtained considerable success throughout the mortgage industry as a result of its  
16 operations model and organizational structure, which includes a corporate office located in  
17 Bellevue, Washington, and branch offices located in 15 states throughout the continental United  
18 States.

19 12. Axia utilizes branch offices to serve the surrounding communities which primarily  
20 contain local teams made up of Loan Originators and operations support staff.

21 13. The branch offices are overseen by Branch Managers, whose responsibilities include  
22 overseeing and building the branch operations, recruiting and overseeing top Loan Originators,  
23 and managing loan processors and operational staff.

24 14. These Branch Managers are, in turn, overseen by Area Managers, whose primary  
25 duties include managing sales and operations of assigned branches within a given geographic  
26 location. Area Managers are tasked with managing all Branch Managers within that geographic  
27 location, assisting with the recruiting, training, and management of new Loan Originators and  
28

1 other branch staff, and with helping to increase loan volume within the assigned geographic  
2 location.

3 15. Regional Managers oversee staff and recruit Area Managers and Branch Managers  
4 within a larger region. Their primary responsibility is to manage operations within that region and  
5 to ensure profitability. As such, they oversee all operations within the given region, making sure  
6 that Area Managers, Branch Managers, Loan Originators, and all other staff comply with their  
7 duties and responsibilities within their respective employment agreements, and operate in  
8 accordance with all of Axia's policies and procedures, as well as all applicable laws and  
9 regulations.

10 16. Axia invests substantial money and time in developing its employee base, and each  
11 position plays a pivotal role in its success.

12 17. Axia also invests substantial money and time in developing its business model and  
13 operations, and requires its employees to maintain strict confidentiality to protect that information.

14 **B. Axia's Employment Contracts**

15 18. All employees sign employment contracts with Axia restricting the use, copying and  
16 taking of confidential customer lists, and prohibit them from working on behalf of competitors.

17 19. For example, prior to his departure from Axia, Bartolomucci served as Area  
18 Manager over several of Axia's branches. As a condition of his employment, Bartolomucci  
19 executed an Employment Agreement with Axia which contained an express confidentiality  
20 provision, requiring that he maintain the confidentiality of Axia's business information and refrain  
21 from unfairly competing with Axia while employed and being paid by it (the "Bartolomucci  
22 Employment Agreement").

23 20. Prior to her departure from Axia, Hall served as V.P. Regional Manager of Axia's  
24 Pacific Northwest Region, and later as Retail Sales Director. As a condition of her employment,  
25 Hall executed an Employment Agreement with Axia which contained an express confidentiality  
26 provision, requiring that she maintain the confidentiality of Axia's business information and  
27 refrain from unfairly competing with Axia while employed and being paid by it (the "Hall  
28 Employment Agreement").

21. The Bartolomucci Employment Agreement and Hall Employment Agreement contain the same confidentiality provision (collectively, the “Employment Agreements”). Other former Axia employees who are now employed by MasonMac signed similar agreements.

22. As a condition of employment, Axia employees are asked to sign such agreements to ensure that Axia’s confidential information will not be used against it, and that its employees do not use such information in order to help Axia’s competitors while simultaneously being employed by Axia.

23. Axia also utilizes technology to ensure that its confidential information is protected. Employees receive company laptops which encrypt data and require multi-factor authentication for remote access. Axia maintains security consisting of firewalls and content filtering in order to detect intrusions. Consumer data is also encrypted within Axia’s loan origination system. Further, only certain tiers of employees are able to access certain data and information, which is another security measure utilized by Axia. In addition, Axia has implemented numerous policies and procedures which pertain to the handling of both company and consumer data, and holds frequent trainings regarding the protection of such information.

24. Paragraph 3.7 of the Bartolomucci Employment Agreement, and paragraph 3.8 of the Hall Employment Agreements provide:

Confidential Information. For purposes of this Agreement, “Axia’s Confidential Information” means any and all of the following information regardless of whether such information is incorporated in any tangible or intangible record or document: (i) non-public information of customers and potential customers, (ii) information relating to Axia’s method of operations, customers, prospective customers, trade name and trade style, marketing, promotional material, finances, business plans or strategy, operating manuals, training materials, policies, and personnel records; and (iii) any other information in the possession of Axia that is not generally known to the public, whether or not specifically denoted by Axia as confidential or proprietary. Employee agrees that he/she will hold Axia’s Confidential Information in strict confidence and will not disclose or use any of Axia’s Confidential Information during or after Employee’s employment with Axia except as specifically authorized by Axia and for Axia’s benefit. Employee agrees that any loss to Axia of such

1 Confidential Information would cause irreparable harm to Axia.  
2 (collectively, “Confidential Information”)

3 25. Paragraph 3.10 of the Bartolomucci Employment Agreement, and paragraph 3.11 of  
4 the Hall Employment Agreements provide:

5 Return of Property. Employee agrees that upon employment separation,  
6 or if requested by Axia during the course of employment, Employee shall  
7 turn over to Axia, all documents, files in any format, electronic media,  
8 computers and other materials or work product in Employee’s possession  
9 or control that Employee possesses or that was created pursuant to or  
10 derived from Employee’s services while employed at Axia. Employer  
11 reserves the right, in its sole discretion, to offset unreturned equipment  
12 against any unpaid wages to employee in the amount of the value of the  
13 equipment. In no case is employee ever entitled to the proprietary and  
14 Axia Confidential Information on the equipment, if any.

15 26. Paragraph 3.4 of the Employment Agreements provide:

16 Exclusive Employment. During the term of this Agreement, Employee  
17 agrees that he/she shall not perform services for any competitor of Axia  
18 or for other person or entity in the mortgage lending and/or real estate  
19 industries. Employee shall not submit or permit or suffer any employee  
20 of the Branch to submit, any loan to any other mortgage broker, mortgage  
21 banker, wholesaler or financial institution.

22 27. The provisions from the Employment Agreements listed above are collectively  
23 referred to as the “Confidentiality and Loyalty Provisions.” Other former Axia employees who  
24 were improperly induced by MasonMac by working with Axia employees in violation of their  
25 legal duties, to leave Axia and later join MasonMac, and to take with them confidential  
26 information from Axia’s computers and computer systems, were also bound by similar  
27 Confidentiality and Loyalty Provisions within their employee agreements.

28 28. On information and belief, MasonMac was or should have been aware that  
Bartolomucci and Hall—as well as other Axia employees from several of its branches, including  
Florida, Oregon, Washington, and Minnesota—were bound by the above Confidentiality and  
Loyalty Provisions in the Employment Agreements.

**C. For the avoidance of doubt, Axia does not allege any misuse, misappropriation, or other misconduct by MasonMac with respect to trade secrets. MasonMac Conspires with Axia's Employees to Wrongfully Solicit and Hire *En-Masse* from Several of its Branches**

29. MasonMac's recruitment of Axia's employees to leave on a coordinated basis, *en masse* from its branches, including Florida, Oregon, Washington, and Minnesota, began in approximately July 2022 when Hall terminated her employment at Axia. Almost two dozen other Axia employees, primarily from its Washington and Minnesota offices, also departed *en masse* in July and August 2022. These employees included Loan Originators, Branch Managers, Operations Managers, Loan Processors, and others. Upon information and belief, this coordinated departure could not have occurred unless Hall and other management employees acted on behalf of MasonMac as its agents and co-conspirators to solicit their colleagues in violation of their contractual duties and fiduciary duties and duties of loyalty.

30. Also at this time, on information and belief, another high-level Axia employee was acting at MasonMac's direction, as its agent and co-conspirator, to encourage and abet Axia employees to quit and violate the terms of their contracts and their fiduciary duties and duty of loyalty to their employer. As of today, due in part to the actions of this employee on behalf of MasonMac, three Branch Managers have departed and, on information and belief, three Regional Managers are in constant communication with MasonMac, including several with written offer letters from MasonMac.

**D. MasonMac Recruits Bartolomucci and Conspires with Him to Export Axia's Confidential Information for MasonMac's Benefit**

31. Earlier this month, MasonMac recruited Bartolomucci to quit Axia and to violate the terms of his Employment Contract in addition to his fiduciary duty and duty of loyalty to Axia, and join MasonMac.

32. On May 15, 2023, Ryan Shaffer ("Shaffer"), former Regional Manager at Axia and current E.V.P. of National Production at MasonMac, organized a meeting with Axia employees by sending a Microsoft Teams meeting invitation from his MasonMac email address to Bartolomucci and Rueben Concepcion, the Branch Manager overseeing the Key West area. Susan Schmidt,



1 Senior V.P. of Operations at MasonMac, and Jessica Hart, Underwriting Manager at MasonMac,  
2 were also invited to attend this meeting.

3 33. As a former Axia employee, Shaffer is intimately aware that Axia had valid and  
4 enforceable contracts with its employees, yet still engaged in efforts to encourage and abet Axia  
5 employees to engage in a coordinated solicitation effort on behalf of MasonMac, and to quit and  
6 take confidential customer lists from Axia's computers and computer systems in violation of the  
7 terms of their duties to Axia.

8 34. For example, a few weeks following the May 15 meeting, Bartolomucci knowingly  
9 breached his fiduciary duties and duties of loyalty owed to Axia by working as an agent of  
10 MasonMac to steal Axia's confidential information for MasonMac's benefit. On June 6, 2023, at  
11 the direction of MasonMac, Bartolomucci emailed an Axia customer list with hundreds of  
12 customers' confidential information, including contact information and highly sensitive financial  
13 information, to his personal email address from his Axia work computer. Bartolomucci attempted  
14 to cover his tracks by deleting the email and then deleting his Trash folder; however, Axia  
15 successfully recovered this email. Bartolomucci's cover-up effort is evidence that he knew that  
16 his taking of confidential information was done without authorization by Axia, and violated his  
17 contract and other legal duties.

18 35. On June 15, 2023, Axia terminated Bartolomucci following his blatant breach of  
19 duty of loyalty to Axia and breach of fiduciary duty by stealing Axia's confidential information.

20 36. MasonMac knew that the Axia employees all worked at Axia and owed them  
21 contractual and legal duties during MasonMac's wrongful recruitment efforts. MasonMac also  
22 knew its recruiting tactics described herein were wrongful, and violated Axia's contracts, policies  
23 and the duties owed to Axia by its employees. Indeed, it would violate MasonMac's own policies  
24 and employment agreements if one of its employees engaged in similar recruiting tactics.

25 **FIRST CAUSE OF ACTION**

26 **Unfair Competition (California Business and Professions Code §§ 17200 *et seq.*)**

27 37. Axia hereby alleges and incorporates by reference each and every allegation in all  
28 preceding and subsequent paragraphs as if fully set forth herein.

38. MasonMac's acts alleged herein, including but not limited to its conspiracy with Axia's employees to breach their contracts, violate their fiduciary duties and duty of loyalty, take Axia's confidential information, and defraud Axia constitute unfair, unlawful, and/or fraudulent business acts and practices under California Business and Professions Code section 17200, because such acts are forbidden by various state and federal laws, unscrupulous, unlawful, unfair, and injurious to Axia.

39. MasonMac's actions were unlawful, because they violated California Penal Code § 502(c), and induced Axia's employees to breach their statutory fiduciary duties and duties of loyalty to Axia.

40. MasonMac's actions were unfair because they offend public policy and the law, and were immoral, unethical, oppressive, unscrupulous, and injurious to consumers, as alleged in detail throughout this Complaint.

41. Axia is informed and believes, and on that basis alleges, that MasonMac was aware of the wrongful nature of its acts.

42. As a direct, proximate, and foreseeable result of MasonMac's wrongful conduct alleged herein, Axia has suffered irreparable injuries, including but not limited to wrongful loss of customers to MasonMac based on their unfair and illegal actions and use of Axia's confidential information, for which Axia's remedy at law is inadequate. The public interest would be served by granting the relief sought because it clearly favors preventing institutions such as MasonMac from engaging in and profiting from unfair business practices as described herein.

43. Axia is also entitled to restitution and disgorgement of MasonMac's ill-gotten gains relating to its unfair competition. These remedies are cumulative of one another and of other remedies under California law.

## **SECOND CAUSE OF ACTION**

### **Intentional Interference with Prospective Economic Advantage**

44. Axia hereby alleges and incorporates by reference each and every allegation in all preceding and subsequent paragraphs as if fully set forth herein.

45. Axia had existing and prospective economic relationships with each of its existing

1 and prospective borrowers. Each of those relationships benefitted Axia economically and likely  
2 would have continued to benefit Axia economically in the future, as Axia, like most mortgage  
3 companies, makes money by servicing the same borrowers repeatedly by financing additional  
4 loans, re-financing old loans, and servicing loans.

5 46. MasonMac was aware of Axia's economic relationships with its existing and  
6 prospective borrowers, including specifically by virtue of the client information they induced  
7 Bartolomucci and other members of Axia's Florida, Oregon, Washington or Minnesota branches  
8 to improperly supply to them, and generally by virtue of their understanding of the mortgage  
9 lending business and how it operates with respect to client relationships. Axia is informed and  
10 believes that MasonMac intended to disrupt, and succeeded in disrupting, Axia's business  
11 operations and relationships with its current and prospective borrowers by engaging in the conduct  
12 set forth in the preceding and subsequent paragraphs, including without limitation by (a) directly  
13 or indirectly soliciting Axia's borrowers to MasonMac with the help of Axia's employees and  
14 confidential information; (b) actively diverting Axia's borrowers to MasonMac with the help of  
15 Axia's employees and confidential information; and (c) misusing Axia's computer systems and  
16 networks without permission or authorization to access and misappropriate Axia's and its  
17 borrowers' confidential and proprietary information. MasonMac was or should have been aware  
18 that Bartolomucci and Hall—as well as other Axia employees from several of its branches,  
19 including Florida, Oregon, Washington, and Minnesota—were bound by the above Confidentiality  
20 and Loyalty Provisions in the Employment Agreements. Moreover, Axia has incontrovertible  
21 evidence that Bartolomucci knowingly breached his fiduciary duties and duties of loyalty owed to  
22 Axia by emailing confidential customer information from Axia's computer systems to his personal  
23 email address before Axia terminated his employment on June 15, 2023. Most, if not all, of the  
24 foregoing actions were wrongful for the further reason that MasonMac induced Axia's employees  
25 to breach their fiduciary duties and duties of loyalty to Axia.

26 47. As a result of all MasonMac's numerous acts of misconduct, Axia has suffered and  
27 continues to suffer economic loss and other general and specific damages, including but not  
28 limited to damage to business reputation, lost profits, lost revenue, loss of its competitive position,

1 loss of market share, lost business opportunities, and loss of workforce, all in an amount to be  
 2 determined according to proof at the time of trial. Axia has also been irreparably harmed, entitling  
 3 it to injunctive relief.

4 48. MasonMac committed the wrongful acts alleged herein maliciously, oppressively,  
 5 and with intent to defraud and permanently deprive Axia of its property, economic benefits, and  
 6 employees. Axia is entitled to punitive and exemplary damages in an amount to be ascertained  
 7 according to proof at the time of trial, which is appropriate to punish and set an example.

### 8 **THIRD CAUSE OF ACTION**

#### 9 **Negligent Interference with Prospective Economic Advantage**

10 49. Axia hereby alleges and incorporates by reference each and every allegation in all  
 11 preceding and subsequent paragraphs as if fully set forth herein.

12 50. Axia had existing and prospective economic relationships with each of its existing  
 13 and prospective borrowers. Each of those relationships benefitted Axia economically and likely  
 14 would have continued to benefit Axia economically in the future, as Axia, like most mortgage  
 15 companies, makes money by servicing the same borrowers repeatedly by financing additional  
 16 loans, re-financing old loans, and servicing loans.

17 51. MasonMac owed a duty of care to Axia because its recruitment and onboarding of  
 18 several members from Axia's Florida, Oregon, Washington or Minnesota branches could not be  
 19 performed without a direct effect on Axia's business, the adverse effect on Axia's business was  
 20 clearly foreseeable, Axia's business suffered injury from MasonMac's actions, MasonMac's  
 21 actions were closely connected with and caused Axia's business injury, MasonMac's actions were  
 22 blameworthy because it acted after the probability of damage was known or should have been  
 23 known, and public policy supports a duty of care.

24 52. MasonMac was or should have been aware of Axia's economic relationships with its  
 25 existing and prospective borrowers, including specifically by virtue of the client information they  
 26 induced Bartolomucci and other members of Axia's Florida, Oregon, Washington, or Minnesota  
 27 branches to improperly supply to them, and generally by virtue of their understanding of the  
 28 mortgage lending business and how it operates with respect to client relationships.

1           53. Axia is informed and believes that MasonMac wrongfully disrupted Axia's business  
2 operations and relationships with its current and prospective borrowers by engaging in the conduct  
3 set forth in the preceding and subsequent paragraphs, including without limitation by (a) directly  
4 or indirectly soliciting Axia's borrowers to MasonMac with the help of Axia's employees and  
5 confidential information; (b) actively diverting Axia's borrowers to MasonMac with the help of  
6 Axia's employees and confidential information; and (c) misusing Axia's computer systems and  
7 networks without permission or authorization to access and misappropriate Axia's and its  
8 borrowers' confidential and proprietary information. MasonMac was or should have been aware  
9 that Bartolomucci and Hall—as well as other Axia employees from several of its branches,  
10 including Florida, Oregon, Washington, and Minnesota—were bound by the above Confidentiality  
11 and Loyalty Provisions in the Employment Agreements. Moreover, Axia has incontrovertible  
12 evidence that Bartolomucci knowingly breached his fiduciary duties and duties of loyalty owed to  
13 Axia by emailing confidential customer information from Axia's computer systems to his personal  
14 email address before Axia terminated his employment on June 15th, 2023. Most, if not all, of the  
15 foregoing actions were wrongful for the further reason that MasonMac induced Axia's employees  
16 to breach their fiduciary duties and duties of loyalty to Axia.

17           54. As a result of all MasonMac's numerous acts of misconduct, Axia has suffered and  
18 continues to suffer economic loss and other general and specific damages, including but not  
19 limited to damage to business reputation, lost profits, lost revenue, loss of its competitive position,  
20 loss of market share, lost business opportunities, and loss of workforce, all in an amount to be  
21 determined according to proof at the time of trial. Axia has also been irreparably harmed, entitling  
22 it to injunctive relief.

23           55. MasonMac committed the wrongful acts alleged herein maliciously, oppressively,  
24 and with intent to defraud and permanently deprive Axia of its property, economic benefits, and  
25 employees. Axia is entitled to punitive and exemplary damages in an amount to be ascertained  
26 according to proof at the time of trial, which is appropriate to punish and set an example.  
27  
28

**FOURTH CAUSE OF ACTION**

**Tortious Interference with Contract**

56. Axia hereby alleges and incorporates by reference each and every allegation in all preceding and subsequent paragraphs as if fully set forth herein.

57. Axia had valid and enforceable Employment Agreements with all former Axia employees referenced herein.

58. Specifically, Axia was party to the Loyalty and Confidentiality Provisions in the Employment Agreements.

59. At all times, MasonMac was aware that Axia had valid and enforceable contracts with its employees, including because former Axia employees engaged in solicitation efforts on behalf of MasonMac. At a minimum, MasonMac was on notice that it is standard within the mortgage industry for employees to be subject to Confidentiality and Loyalty Provisions.

60. MasonMac intentionally induced Bartolomucci and the other former Axia employees to breach the Confidentiality and Loyalty Provisions of their Employment Agreements by, among other things, inducing him to transfer Axia's confidential information to MasonMac, to divert Axia's clients to MasonMac, and to act as an agent of MasonMac during his ongoing employment with Axia. MasonMac also induced Axia employees to work as agents of MasonMac, while still employed by Axia, to induce other members of Axia's Florida, Oregon, Washington or Minnesota branches to resign and undertake employment with MasonMac.

61. MasonMac's interference with Axia's Employment Agreements caused the breach thereof and resulted in damage to Axia by appropriating the confidential information, employee training, and client relationships into which Axia had invested substantial time and expense for MasonMac's monetary gain.

62. MasonMac's intentional and wrongful conduct has caused immediate, substantial, and ongoing injury to Axia, including substantial economic harm in the form of damage to its relationships with its valued customers and employees, the loss of its competitive position, loss of market share, loss of employees, and lost profits. Axia has also been irreparably harmed, entitling it to injunctive relief.

63. MasonMac committed the wrongful acts alleged herein maliciously, oppressively, and with intent to defraud and permanently deprive Axia of its property, economic benefits, and employees. Axia is entitled to punitive and exemplary damages in an amount to be ascertained according to proof at the time of trial, which is appropriate to punish and set an example.

#### **FIFTH CAUSE OF ACTION**

##### **Violation of CA Penal Code § 502**

64. Axia hereby alleges and incorporates by reference each and every allegation in all preceding and subsequent paragraphs as if fully set forth herein.

65. On a repeated and systematic basis, Bartolomucci and, upon information and belief, other employees from Axia's Florida, Oregon, Washington or Minnesota branches, acting as MasonMac's agents, either individually or in conspiracy with one another, have knowingly and without permission accessed Axia's computer, computer system, or computer network in violation of their agreements with Axia and in violation of California Penal Code § 502(c)(7), as alleged in detail above.

66. Furthermore, the same individuals and MasonMac, either individually or in conspiracy with one another, have knowingly accessed and made use of data from Axia's computer, computer system, or computer network in order to wrongfully control or obtain money, property, or data, in violation of California Penal Code § 502(c)(1), as alleged in detail above.

67. Furthermore, the same individuals and MasonMac, either individually or in conspiracy with one-another, knowingly accessed and without permission took, copied, or made use of data from Axia's computer, computer system, or computer network in violation of California Penal Code § 502(c)(2), as alleged in detail above.

68. Furthermore, the same individuals and MasonMac, either individually or in conspiracy with one another, have knowingly used, or caused to be used, Axia's computer services without permission, in violation of California Penal Code § 502(c)(3), as alleged in detail above.

69. As alleged in more detail herein, these violations have damaged Axia by, among other things, diverting Axia's confidential borrower information to MasonMac, which MasonMac

1 used to unfairly compete with Axia, interfere with its business relationships, compete, close loans,  
 2 and to take Axia's employees *en masse* from Axia's Florida, Oregon, Washington or Minnesota  
 3 branches.

4 70. Pursuant to California Penal Code § 502(e), Axia is entitled to compensatory and  
 5 punitive damages, attorneys' fees, injunctive relief, and other legal and equitable relief as prayed  
 6 for herein.

7 71. MasonMac has acted with oppression, fraud, and malice toward Axia, entitling Axia  
 8 to an award of punitive damages in an amount sufficient to deter them from future misconduct.

### 9 **PRAYER FOR RELIEF**

10 WHEREFORE, Axia respectfully prays for judgment as follows:

- 11 1. For preliminary and/or permanent injunctive relief, including but not limited to:
  - 12 (a) Requiring MasonMac to preserve all confidential, proprietary, or protected  
 13 Axia information in its possession and any documents or communications  
 14 related to the allegations set forth herein;
  - 15 (b) Restraining and enjoining MasonMac, its agents, servants, and employees,  
 16 and all other persons acting in concert or participating with it from disclosing  
 17 or utilizing any confidential, proprietary, or protected information obtained  
 18 from Axia including, but not limited to, the identity and other information of  
 19 Axia's customers;
  - 20 (c) Requiring MasonMac, Bartolomucci and other former Axia employees to  
 21 return any confidential, proprietary, or protected information or other  
 22 property or information of Axia wrongfully taken from Axia; and/or;
  - 23 (d) Restraining and enjoining MasonMac, its agents, servants, and employees,  
 24 and all other persons acting in concert or participating with it from inducing  
 25 Axia employees to breach their contractual and fiduciary duties and duties of  
 26 loyalty to Axia.
- 27 2. For compensatory and general damages according to proof;
- 28 3. For special damages according to proof;



4. For consequential damages according to proof;
5. For restitution and disgorgement according to proof;
6. For punitive and exemplary damages according to proof;
7. For prejudgment interest at the maximum legal rate;
8. For costs of the proceedings herein;
9. For attorneys' fees as provided by statute; and
10. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Axia hereby demands a jury trial for all issues so triable.

DATED: June 29, 2023

SIDLEY AUSTIN LLP

By: /s/ Eric B. Schwartz

Chad S. Hummel

Eric B. Schwartz

Marissa X. Hernandez

*Attorneys for Plaintiff*

*Axia Financial, LLC d/b/a Axia Home Loans*